

June 2, 2011

Commission's Secretary,
Office of the Secretary,
Federal Communications Commission.
445 12th St., SW, Room TW-A325,
Washington, DC 20554.

WC Docket No. 11-59

Dear sirs:

General Comments

Thank you for the opportunity to comment on the right-of-way issues and tower siting related to broadband deployment. These comments are in behalf of the Kansas County Highway Association we maintain the roads outside city limits, so it is mostly rural area.

Right-of-way use permits are only for excavating in the right-of-way and attachments to existing poles are not regulated. All utilities are checked to insure that their facilities do not cause a safety issue and do not obstruct the installation of other utilities. This almost lack of regulation does not seem to be an incentive for the companies to install broadband in lower populated areas. Almost half of Kansas counties do not have zoning and there is no permit of any kind to erect a tower. However, we find that these rural areas are underserved. The least regulated and least served areas coincide, the problem is not local requirements that slow broadband, but market economics.

The Application Process for right-of-way use approvals

The application process is straightforward in all counties. Utility companies have been obtaining permits for years without problems. Broadband companies that have problems get in a hurry and don't read the instructions.

The question regarding difficulty in identifying the rights-of-way holder reflects that many times broadband employees are not properly trained to read a map, or look at the back of a sign that identifies the organization maintaining the road.

Permits for right-of-way use normally take less than two weeks. Those applications that are not processed within this time frame are usually incomplete or submitted to the wrong agency. A process that would expedite permit approval would be for the broadband company to fill in all the blanks and provide other required information.

Additional information on ROW charges.

County right-of-way charges are the same for all utilities in Kansas and only include a processing and inspection charges. To the extent that all right-of-way charges are uniform among all utilities the federal government has no role in determining if costs are reasonable.

Qualitative Information

To what extent are local requirements designed to achieve public interest goals, such as ensuring public safety, avoiding disruption of traffic, or maintaining roadways? Local requirements are all about traffic safety, restoration of the right-of-way, and proper location to prevent blocking other utilities.

Are there situations in which localities believe that infrastructure providers have unreasonably refused to build out broadband facilities despite best efforts on the part of the locality to encourage deployment through rights of way or wireless facility siting policies? Yes, the most underserved areas of the state are rural areas. These rural areas have few if any regulations that would delay broadband installation. For instance 50 of our 105 counties do not have zoning, so a tower can be constructed at any location without a permit of any kind, yet these rural areas remain underserved while there is intense interest in increasing broadband capabilities in urban areas that already have reasonable service.

Consistent or Differential Treatment

Kansas law prohibits discriminatory treatment of public utilities, so all utilities have equal charges and requirements.

Presence or Absence of Uniformity

There is always going to be some differences among local jurisdictions. Utilities just have to understand the differences and play by the rules. Water, electricity, telephone and cable all understand this. Broadband as an industry has even less of a problem as so much of their facilities are over the airwaves. We find that most of the issues that broadband companies have are self-inflicted by rushing into an area without proper planning and coordination with local governments. The lack of uniformity is mostly in urban areas between adjacent cities where broadband service is already adequate and the need for speed is to capture market share, not to provide a basic service.

Remaining questions from the NOI

The federal government should not be involved in regulating the use of public right-of-way for broadband. Broadband deployment is somewhat delayed due to local regulations, but these regulations are needed to insure public safety and that the location of the facilities will not block other utilities. Broadband may blame local governments for delay but the real issue to them is not providing broadband service, but to capture market share. Broadband should be given no federal preference in the use of the right-of-way over other public utilities such as water, sewer, and electricity

Very truly yours

Norman Bowers
Local Road Engineer
Kansas Association of Counties